IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.381 OF 2003

Kaushik Shah Shares and Securities Ltd. ... Petitioners

v/s

Nirjay Securities Pvt.Ltd. and others ... Respondents

Mr Sham Diwan with Mr Vicky Singh, Mr S.H. Merchant and Mr Prakash Shukla i/b M/s M. and M. Legal Venture for Petitioners.

Mr V.N. Kantawala i/b M/s Kantawala and Co. for Respondent Nos.2 to 5.

CORAM : D.K.DESHMUKH J.

DATE : 4TH APRIL 2005

P.C.: -

1. The learned counsel appearing for both the sides have agreed that for disposing of this petition in following terms, no reasons are necessary.

A) The award impugned in the petition is set aside in so far as it dismisses the claim against the respondent Nos.2 to 5.

B) The Arbitration Department of the Bombay Stock Exchange is directed to constitute an Arbitral Tribunal in accordance with the bye-laws and refer the dispute between the parties to that Tribunal.

C) It is directed that the Arbitral Tribunal shall treat documents at Exh.I dated 16th April 2002 as an affidavit and statements made therein as statements made on oath by Prakash Devidas Shah.

D) The Arbitral Tribunal shall permit the respondents to cross-examine the said deponent Prakash Devidas Shah. The claimants shall be at liberty to examine

any witness that the claimants may chose. Similarly, the respondents shall also be at liberty to lead any oral evidence that the respondents may chose. he Arbitral Tribunal shall thereafter make a fresh award.

E) It is clarified that so far as the liability of the respondent No.1 Company is concerned, there is no challenge to the award and the liability has been admitted by the respondent No.1. Therefore, the question to be decided by the Arbitral Tribunal now is whether the respondent Nos.2 to 5 are also liable or not. The award in so far as it dismisses the claim against the respondent Nos.2 to 5 is set aside. It is clarified that the award, in so far as it awards the claim against the respondent No.1 is not disturbed.

. Petition is disposed off in the aforesaid terms with no order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as

true copy.

. Certified copy expedited.